



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land – Helping to build great communities

Date: September 22, 2016

To: Planning Commission

From: Ryan Hostetter, Supervising Planner

Via: Ellen Carroll, Planning Manager/Environmental Coordinator

Subject: Continued item – Phillips 66 Development Plan/Coastal Development Permit / DRC2012-00095

Overview and Recommendation

On May 16, 2016, the Planning Commission continued the hearing for the Phillips 66 Rail Spur project to September 22, 2016. The Planning Commission directed staff to return at the September 22nd hearing with findings and conditions, a statement of overriding considerations, and a list of other conditions of approval, including those proposed by the Planning Commission at the end of the May 16th hearing, that address the three unit train per week project. Since that time, staff has prepared the information requested by the Planning Commission, there has been additional information submitted, and Phillips 66 has requested a continuance to March 2017. Staff is recommending that the Commission not grant the continuance and instead take an action today on the project. In this regard, we provide the following comments in proceeding with this hearing.

- The Planning Commission has the information necessary to approve or deny the proposed project.
- Findings and Conditions of Approval, and Findings for Denial are included in the Planning Commission staff report packet. The Public and applicant have had adequate time to review this information.
- The Planning Commission, members of the public, the applicant and County staff have invested a tremendous amount of time, and applicant and taxpayer dollars throughout the public process for the proposed project.
- A continuance is not necessary. It would require a substantial investment of time, without added benefits, for the Planning Commission (or future Planning Commissions), the public, the applicant and staff.
- The information in the Record provides adequate information for the Commission to make a decision on the proposed project.
- It is expected that any decision by the Planning Commission will be appealed to the Board of Supervisors.
- The timing of the Surface Transportation Board decision is uncertain.
- Any future decision of the Surface Transportation Board would be reviewed by the County, and can be appropriately considered at that time.

Therefore staff recommends that the Planning Commission make a decision today to approve or deny the project rather than granting a continuance.

Planning Commission Options

The Planning Commission has three options for today's continued hearing:

1. Deliberate and take action to approve the project and certify the Final Environmental Impact Report with the new findings and conditions attached to this report (discussion and attachments below).
 - Requires opening public comment regarding the new findings and conditions of approval.
2. Deliberate and take action to deny the project based on the findings submitted in your staff report dated February 4, 2016. – Staff Recommendation
 - Does not require additional public comment.
3. Continue the Project based on a letter submitted to your Commission from Phillips 66 dated August 10, 2016.
 - Does not require additional public comment today.

Background and Information Requested

On May 16, 2016, the Planning Commission continued the hearing for the above-referenced item to September 22, 2016. The Planning Commission directed staff to return at the September 22nd hearing with findings and conditions, a statement of overriding considerations, and a list of other conditions of approval, including those proposed by the Planning Commission at the end of the May 16th hearing, that address the three unit train per week project.

The proposed Project includes three unit trains per week, with a maximum of 150 unit trains per year, delivering crude oil to the Santa Maria Refinery (as compared to the initially proposed project of five unit trains per week and 250 unit trains per year which is evaluated in the Final Environmental Impact Report (FEIR) dated December 2015). The three train option was evaluated in the FEIR as one of the alternatives, and was found to be environmentally preferable to the Proposed Project, which was five trains per week.

During the May 16th hearing, the Planning Commission directed the Applicant to submit a detailed description of the three train per week project, including information on items such as the maximum number of trains that could arrive on a daily basis as well as other details relating to how the Project would function. In addition, County staff requested additional funding from the Applicant in July to cover the cost of consultant fees needed to fund the numerous tasks required to prepare the project materials, such as addressing responding to comments received during the hearing process and analyzing potential impacts associated with implementation of the newly proposed mitigation measures such as using only Tier 4 locomotives on the project site.

The Applicant submitted a letter on August 15, 2016 (Exhibit F) with some project description information, and a list of mitigations that the applicant states that the County is pre-empted from applying to the project as conditions. However, the additional fees have not been submitted nor has the detailed information (requested by the Commission) regarding how the three train option

would function been submitted. Although the applicant did not submit funding, staff determined that it was prudent to provide the Commission with the information necessary to complete the hearings on the project. Staff costs have not been reimbursed. The staff report packet includes the following information:

- Development Plan/Coastal Development Permit Findings for Approval (Exhibit A)
- Conditions of Approval (limited to FEIR mitigation measures that are not preempted by Federal law - Exhibit B-1);
- Conditions of Approval (for FEIR mitigation measures that are preempted by Federal law - Exhibit B-2);
- CEQA Findings/Statement of Overriding Considerations (Exhibit C);
- February 4, 2016 staff report with Findings for Denial (Exhibit D); and
- Correspondence from Phillips 66 received since the May 16, 2016 Planning Commission hearing (Exhibits E, F, and G).

Summary of Findings

The Development Plan/Coastal Development Permit Findings for approval of the Project (Exhibit A) address the three train per week project. The Findings discuss the Project's compatibility with surrounding residential areas due to it being an allowable use under the Industrial land use designation, a subordinate use to the existing refinery, and the 0.5 mile buffer between the project and State Route 1.

Environmentally Sensitive Habitat Area (ESHA): The Findings address the Unmapped ESHA issue by stating the area of project disturbance where sensitive habitat is located and would be removed cannot be classified as Unmapped ESHA because, per the Coastal Zone Land Use Ordinance (CZLUO), the determination of presence of Unmapped ESHA was not made at or before the time of acceptance of the project's land use application.

Coastal Access: The Findings also include a discussion of the County's existing vertical coastal access requirement that runs with the project site, stemming from the Board of Supervisor's approval of the 2013 Throughput Project, and the Applicant's efforts to implement this condition of approval by making an offer to dedicate an easement in March 2015. The next steps for determining the appropriateness of vertical coastal access at this location are discussed in the Findings and generally involve the Planning Commission first making a determination as to whether the easement is consistent with the CZLUO requirements for public safety and protection of fragile coastal resources.

If the Planning Commission approves the Rail Spur Project and makes a determination the project site complies with the CZLUO requirements for vertical coastal access, the Commission can rely on the FEIR's analysis of the three types of access and direct the Applicant to prepare an application that details plans for crossing the UPRR right-of-way and for describing other physical and logistical requirements that would be needed. Once the application is received by the County it would be reviewed to determine what additional environmental review would be needed.

Summary of Conditions of Approval

The Conditions of Approval (Exhibit B-1) consist of the mitigation measures from the FEIR but have been revised to include only those that pertain to the three train per week rail spur project on the project site – and do not include those mitigation measures that were recommended in the FEIR to address project impacts along the UPRR mainline since these are likely preempted

by Federal law (Exhibit B-2). In addition, several conditions of approval have been modified to address recommendations made by the Planning Commission during the May 16th hearing (e.g., increased berm height to further reduce aesthetic impacts of the project as seen from residential areas to the east, elimination of all locomotive idling during nighttime hours, etc.).

The FEIR mitigation measures that are not included for consideration as conditions of approval due to being applicable to the mainline and likely preempted, are measures addressing impacts associated with agricultural resources, air quality, greenhouse gas emissions, biological resources, cultural resources, hazards, public services (e.g., fire safety and emergency response), transportation, and water resources.

In addition, County Staff has prepared a new condition of approval #94 which recommends that a docent led option for vertical access would be appropriate for this location if the Planning Commission finds that coastal access at this site is consistent with the CZLUO requirements. Docent led access was one of the options evaluated under the vertical access section of the FEIR.

Planning Commission Recommended Conditions from May 16, 2016

The table below includes a list of the recommended conditions by the Commission at the end of the May 16, 2016 hearing. The table includes the recommendation, where the condition is located in Exhibit B-1 (if applicable) and a brief discussion of each item.

Planning Commissioner: Proposed Conditions of Approval (COA)	Located	Discussion
1. Add a condition requiring a bigger berm to further reduce aesthetic impacts.	COA 16	MM AV-1a (a) required a berm of 20-feet in height. This berm could be increased in height up to 25 feet and COA 16 reflects this revision. If a berm greater than 25 feet is built it would result in an unnatural landform that would actually increase visual impacts as seen from Highway 1, the De Anza Trail, and the residents located east of the project site by blocking views of important coastal resources.
2. Add a condition requiring additional visual landscaping to further reduce aesthetic impacts.	COA 16	MM AV-1a (d) requires revegetation with native grasses and shrubs that match the surrounding landscape. Adding additional vegetation beyond what is recommended (trees and large shrubs) has the potential to increase visual impacts as seen from Highway 1, the De Anza Trail, and the residents located east of the project site by blocking views of important coastal resources.
3. Add a condition requiring use of dedicated Tier 4 locomotives for moving the trains while at the Project Site.	n/a	With this option, UPRR locomotives would deliver the train to the SMR site and then would have to be switched out with the dedicated Tier 4 locomotives onsite. It is also possible that the UPRR locomotive would then leave the site until the train is ready for departure. This same switching of locomotives would also have to occur for departure.

Planning Commissioner: Proposed Conditions of Approval (COA)	Located	Discussion
		<p>This means there would be emissions associated with six operating locomotives for the arrival and departure operations, as well as additional emissions along the mainline track.</p> <p>Additional truck trips would be needed to deliver diesel fuel to the SMR site for fueling the dedicated Tier 4 locomotives. These additional trucks would also increase air emissions.</p> <p>The benefit of reduced air emissions from use of Tier 4 locomotives on site for the positioning and switching operations would likely be offset by the increased air emissions associated with the additional switching operations for changing out the locomotives for arrival and departure, and the additional truck emissions.</p> <p>Therefore, this measure has not been added to the conditions of approval.</p>
4. Modify MM N-2a to eliminate night-time idling on the Project Site.	COA 76	MM N-2a has been modified allowing unloading and switching activities at the Project Site to be limited to the period of 7 a.m. to 7 p.m.; when a unit train is pulled in between 7 p.m. and 7 a.m., the locomotives shall shut down until the allowed unloading time starting at 7 a.m. No switching or breaking apart of trains or any other locomotive activity is allowed between 7 p.m. and 7 a.m. except for the minimum activity needed to move the unit train onto the Project Site.
5. If vertical coastal access is determined to be appropriate at the Project Site, add a condition requiring docent-only vertical coastal access.	COA 94	If the Commission finds that access at the site is consistent with the CZLUO COA 94 requires docent led pedestrian access only.
6. Add a condition requiring the Applicant to post a bond to cover on-site fire-fighting costs incurred by CAL FIRE.	COA 84, 86, 87	<p>MM-PS-3e requires that the Applicant have an executed operational Memorandum of Understanding (MOU) (now called the Operating Plan) with Cal Fire/County Fire that includes fire brigade staffing/training requirements and Cal Fire/County Fire funding requirements. This MOU shall be reviewed and updated annually by Cal Fire and the Applicant. This agreement could be used to cover onsite fire-fighting costs.</p> <p>MM PS-3g and PS-3h require the Applicant to provide funding for training courses for CAL FIRE staff such as the 40-hour course offered by Security</p>

Planning Commissioner: Proposed Conditions of Approval (COA)	Located	Discussion
		and Emergency Response Training Center Railroad Incident Coordination and Safety (RICS) meeting Department of Homeland security, NIIIMS, OSHA 29CFR 1910.120 compliance.

Additional Staff Recommended Condition

Staff is recommending a modification to the existing mitigation measure from the FEIR. The mitigation measure has been expanded to limit the number of trucks that can be used to transport coke and sulfur from the refinery to an annual average maximum of 49 trucks per day, which was the assumption used as part of the cancer risk assessment. In addition, Staff is recommending a modification to Condition of Approval number 33 (MM-AQ-4b) which implements the mitigation measures listed above to not allow any further trucking of crude on or off the refinery property with the approval of the rail spur project. This is needed since the transportation of crude oil to or from the refinery by truck was not included in the cancer risk assessment.

Surface Transportation Board Petition & Phillips Request to Continue

Valero Refining Company has filed a petition with the U.S. Department of Transportation, Surface Transportation Board (STB). Valero's petition requests that the STB institute a proceeding and declare that the City of Benecia's Planning Commission actions (i.e., denying certification of the Valero Crude by Rail Project FEIR and denying Valero's land use application for a crude oil off-loading facility) are preempted under the Interstate Commerce Commission Termination Act (ICCTA) because the ICCTA does not permit the City of Benecia's Planning Commission to indirectly regulate uprail transportation (i.e., they are potentially preempted).

In July 2016, Phillips 66 submitted a letter to the STB in support of Valero's Petition for Declaratory Order on this matter (Exhibit G). On August 10, 2016, Phillips 66 submitted a letter to your Commission stating the STB has yet to schedule a proceeding to address Valero's petition and that it's their opinion the STB will not issue a decision prior to the September 22nd hearing. The Applicant has requested the September 22nd hearing be continued to March 2017 so that "all parties in this matter can benefit from the direction expected from the Surface Transportation Board."

Conclusion

Staff's original recommendation to deny the project still applies.

As discussed above, Staff recommends that the Planning Commission complete deliberations today and take an action to approve or deny the project. The Commission held six days of hearings on this project and has the information necessary to make a decision. Delaying a decision until March of 2017, would be problematic and costly for the public process. It would be prudent for the Commission to complete the Planning Commission hearing process today.

Correspondence

Several items of correspondence were received after the May 16, 2016 hearing, and have been uploaded to the Department of Planning and Building website for the Commission's and the Public's review with the other correspondence on this project.

If you have any questions regarding this matter, please contact Ryan Hostetter at (805) 788-2351 or rhostetter@co.slo.ca.us, or Kate Shea at (805) 781-4091 or kbshea@co.slo.ca.us.

Attachments

1. Exhibit A – Development Plan/Coastal Development Permit Findings for Approval
2. Exhibit B-1 – Development Plan/Coastal Development Permit Conditions of Approval
3. Exhibit B-2 – Conditions of Approval: County Preempted due to Federal Law
4. Exhibit C – CEQA Findings and Statement of Overriding Considerations
5. Exhibit D -- February 4, 2016 Staff Report and Findings for Denial
6. Exhibit E – Letter from Phillips Aug 10, 2016 requesting continuance
7. Exhibit F – Letter from Phillips/Alston & Bird Aug 15, 2016 with additional information
8. Exhibit G – Phillips/Alston & Bird letter to the Surface Transportation Board
dated July 7, 2016